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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 274

F. O. ROBERTSON,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF VENTURA

STATEMENT AS TO JURISDICTION

ALLEN K. PERRY,
ROBERT R. WEAVER,
Counsel for Appellant.

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF VENTURA

No. 27739

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

vs.

F. O. ROBERTSON
Defendant and Appellant

JURISDICTIONAL STATEMENT

In compliance with Rule 12 of the Revised Rules of the Supreme Court of the United States, appellant submits herewith his statement showing the basis of the jurisdiction of the Supreme Court to entertain the appeal in this cause:

A

The jurisdiction of the Supreme Court to review by direct appeal the judgment herein complained of is conferred by the statute of January 31, 1928, C. 14, Sec. 1, 45 Stat. 54, 28 U. S. C. A., Sec. 344 and 861 (a).

B

The statute of the State of California which it is claimed has drawn in question the provisions of the Constitution

or laws of the United States is Section 703 (a) of the Insurance Code of the State of California, which provides as follows:

> "703. Except when performed by a surplus line broker, the following acts are misdemeanors when done in this State:
>
> (a) Acting as agent for a nonadmitted insurer in the transaction of insurance business in this State";

and Section 1642 of the Insurance Code of the State of California, which provides as follows:

> "1642. A person shall not act as an insurance agent, broker, or solicitor until a license is obtained from the Commissioner, authorizing such person so to act."

The Sections of the Constitution which it is claimed the enforcement of the said Sections have violated are Art. 1, Section 8, para. 3, known as the Commerce Clause of the Constitution of the United States, and the Fourteenth Amendment to the Constitution.

C

The judgment complained of entered herein in the above entitled Superior Court of the State of California in and for the County of Ventura on the 29th day of May, 1945, and application for appeal is presented on the 29th day of May, 1945.

D

On or about the first day of September, 1944, a complaint was filed in the justice court of Ventura Township, County of Ventura, State of California, charging the defendant and appellant, F. O. Robertson, with a violation of Section 703(a) of the Insurance Code of the State of California in the first count, and Section 1642 of the said Code in the second count.

The case was tried on September 26, 1944. The defendant was found guilty on both counts, and by stipulation on September 29, 1944 was set for the date of pronouncement of judgment. Judgment was pronounced on said date and appeal was taken to the Superior Court of the State of California in and for the County of Ventura. The case was set for hearing in the said Superior Court in Ventura on the 4th day of November, 1944.

The question as to the conflict of the above-named Sections of the California Insurance Code as applied to defendant being contrary to the Constitution and Laws of the United States was first raised by argument at the close of the trial in the justice court.

After the pronouncement of judgment and upon the filing of a notice of appeal in the said justice court, the defendant, F. O. Robertson, also filed a Statement on Appeal, setting forth his grounds and points upon which he relied in the said appeal, stating that the evidence was insufficient to justify the judgment of the court for the reason that the act of the defendant was one of a series of transactions constituting interstate commerce. Copy of said Statement is hereto attached marked *Supplement "A."* The Reporter's Transcript of the proceedings in the justice court were introduced into evidence and by stipulation made the evidence in the Superior Court. Extensive briefs were filed setting forth the contention of the defendant that the acts complained of by the People constituted a transaction in interstate commerce, and that the said Sections as applied thereto were an undue burden on interstate commerce and in fact a prohibition thereof. On the 20th day of April, 1945, the Honorable Louis C. Drapeau, Judge of this, the said Superior Court, signed a Memorandum of Opinion in the said case upholding the conviction in the justice court, which opinion held in effect that although insurance business transacted across state

lines was interstate commerce under the decision in *United States* v. *Southeastern Underwriters Assn.*, 64 S. Ct. 1162, it was nevertheless subject to the regulations imposed by the above-mentioned Sections of the California Insurance Code, a copy of which Memorandum of Opinion, filed in the office of the clerk on April 21, 1945, is hereto attached, marked *Supplement "B."*

E

The Superior Court of the County of Ventura, State of California, has rendered a decision herein and it is the highest court in that state which could render such decision.

Cases in Which Appeal May Be Taken from Superior Court

Sec. 963, Calif. Code of Civil Procedure.

"An appeal may be taken from the Superior Court in the following cases:

"I. From a final judgment entered in an action of special proceeding commenced in the Superior Court or brought into the Superior Court from another court."

2 Cal. Jurs., p. 132, para. 16.
1 Cal. Jurs. Suppl., p. 284-5, para. 16.

"The bringing of an action into the Superior Court by appeal is not bringing it into the Superior Court within the meaning of Section 963, Cal. C. C. P. unless the Superior Court had original jurisdiction of the matter."

Unemployment Reserve Commission v. *Francis H. Assn.*, 137 P. (2d) 64.

"If the municipal Court had jurisdiction herein then the determination of the Appellate Department of the Superior Court is final and the case is not appealable (Calif.

Constitution, Art. 6, Sec. 5). If a court had original jurisdiction it did not exercise it."

Art. 6, Sec. 4, Calif. Constitution.

"The Supreme Court shall have appellate jurisdiction on appeal from the Superior Court in all cases in equity, except such as arise in municipal or justice court; also in all cases at law which involve the title or possession of real estate or the legality of a tax imposed, assessment, toll, or municipal fine. Also in such probate matters, etc."

Art. 6, Sec. 4 (b), Calif. Constitution.

"The District Court of Appeals shall have Appellate jurisdiction on appeals from the Superior Court (except in cases where appellate jurisdiction is given the Supreme Court), in all cases at law in which the Superior Courts are given original jurisdiction; also in all cases of forcible entry and detainer (except such as arise in a municipal or justice or other inferior courts) * * * also on questions of law alone in all criminal cases prosecuted by indictment or information except where the judgment of death has been rendered."

Edwards v. *California*, 314 U. S. 160.

"Appeal from a judgment of the Superior Court of California which affirmed the conviction of Edwards under a California statute declaring it to be a misdemeanor for any person to bring, or assist in bringing, into the State any non-resident of the State, knowing him to be an indigent person. The court below was the highest court to which an appeal could be taken under the laws of California. The case was argued here, and reargument was ordered at the 1940 Term, 313 U. S. 545."

Carlson v. *California*, 310 U. S. 106.

Involving city ordinance prohibiting picketing.

Sears v. *Superior Court in and for Calaveras County*, 24 Pac. (2d) 842-843.

"Where the right of appeal existed the writ of certiorari will not lie. In both the Roberts and the Hood cases, supra, the writs of certiorari were denied, notwithstanding the fact that judgments of the inferior court had been affirmed on appeal to the superior court from which last-mentioned court there was no appeal."

F

The grounds upon which appellant contends that the questions involved are substantial are as follows:

1. The business of insurance is commerce and when transacted across state lines, is interstate commerce.

United States v. *Southeastern Underwriters Assn.*, 64 S. Ct. 1162.

2. The Sections of the California Insurance Code cited forbid the defendant from assisting in such a transaction as that described in the Court's Memorandum of Opinion, attached hereto, unless the insurer be admitted to write business in the State of California.

3. This is not only a requirement that the consent of the State must first be obtained before appellant or anyone could assist an insurer to complete an interstate transaction within the State of California, but in view of Section 10818 of the same Code, are an absolute prohibition against the defendant assisting in any transaction for the insurer involved herein or any similar insurer under any circumstances. The said Section reads as follows:

"10818. On and after January 1, 1940, no new insurer may be organized or admitted to operate under this chapter. Nothing herein contained shall prohibit

an insurer theretofore existing under or by virtue of this chapter from transforming to an insurer operating under the provisions of Chapter 9a of this part nor shall anything herein contained prohibit an association now operating under Chapter 8 of this part from transforming to an insurer operating under this chapter at times and in the manner provided in Chapter 8. Any corporation formed pursuant to section 10815, which, prior to January 1, 1940, exhibits proof satisfactory to the commissioner that it has procured one hundred subscribers or applicants who have each paid the required initial premium, and which also deposits with the commissioner on or before January 1, 1940, the sum of $1,000 as a payment on its statutory deposit, may be admitted on completion of its organization and statutory deposit on or before July 1, 1940."

4. An important and serious question is involved in this transaction. The Reporter's Transcript shows that the Witness O'Lein had had trouble on account of his age in obtaining any insurance at all in the State of California (R. T., P. 13, L. 18-21), and that he had heard about the insurer over the radio and seen literature about it as follows (R. T., P. 13, L. 23-24):

"Q. Mr. O'Lein, did you say you have had some trouble in getting insurance? A. At my age a fellow usually does.

"Q. And that is the reason that you applied to this particular company for a policy? A. That is the reason I became interested in that policy. I think I had heard something about that policy over the radio and seen literature, and it was just handy."

Having received an inquiry card, he mailed it to the insurer involved, in the State of Arizona, the same card being returned by the said insurer to the appellant herein. The Appellant called upon the inquirer, and an application was signed and forwarded direct to the insurer, and the trans-

action completed approximately as set out in the Court's Memorandum of Opinion attached hereto.

Although the Witness O'Lein had had difficulty in obtaining insurance in the State of California and was desirous of obtaining it, and although he had heard of the company which issued the policy in question to him by radio and had seen its literature and had inquired of the company in regard to its policies, he was prohibited by the above California law from obtaining such insurance for the reason that the law under which the Appellant was prosecuted and convicted—Sections 703(a) and Section 1642 of the California Insurance Code—prohibits a member of a foreign insurer or any person in the State of California from assisting in any such interstate transaction except in the case of a surplus line broker, which broker, under Chapter Six, Sections 1760 to 1779 of the said insurance code, must obtain a license, must pay a discriminatory three per cent tax, must not write the business in a non-admitted insurer, unless there is no admitted insurer in which the risk can be written, or he must not write it for a less premium than it would be written by any company admitted to do business in the State of California. Furthermore the company with whom this risk was placed could not, under the law, be admitted in the State of California, Section 10818, California Insurance Code, *supra*. The California law is not merely one regulating the character and responsibility of an agent but absolutely prohibits such an agent from writing or assisting the company with which this risk was placed from doing business, either interstate or intrastate in the State of California.

Certainly a law which prohibits interstate commerce at least places a burden upon it.

It has been the contention of the State in this matter and the holding of the Court in the Memorandum of Opinion, *Supplement "B"* attached hereto, that the decision of

the Supreme Court in *United States* v. *Southeastern Underwriters Association*, 64 S. Ct. 1162, does not in any manner affect state regulation of insurance companies, but that under that case, the business of insurance is held to be commerce when transacted across state lines only when a *Federal* law is being interpreted, and that the same business is not commerce and hence not interstate commerce when a *state* law is being construed. The said decision by the United States Supreme Court, however, does not distinguish between two different laws applied to a business but between two different phases of the said business which may be interstate in one phase and intrastate in another. The trial court has quoted the said decision on page 1089 of the said report in part as follows:

> "• • • To uphold insurance laws of other states, including tax laws, Paul v. Virginia's generalization and reasoning have been consistently adhered to."

It is not the contention of Appellant that the State would have no right to regulate insurance business. We agree that the decisions in a limited number of cases hold that, where the regulation is purely local in its application, the states may regulate interstate commerce.

Kelly v. *Washington*, 302 U. S. 1, 58 S. Ct. 87, 82 L. Ed. 3;

Parker v. *Brown*, 317 U. S. 341, 63 S. Ct. 307, 87 L. Ed. 315;

California v. *Thompson*, 313 U. S. 109, 61 S. Ct. 930, 85 L. Ed. 1219.

These decisions, however, have been applied in cases where the state law affects only commerce coming into the regulating state or require acts to be done within the regulating state, and which do not have an extraterritorial effect. The law under which Appellant was prosecuted,

which prohibits him from assisting a non-admitted insurer in transacting business with a California resident, coupled with the requirements for such admission reach out across the state lines and regulate the insurer in the state of its organization and in every state in which it transacts business.

The decision, generalization and reasoning of the old case of *Paul* v. *Virginia*, 8 Wall. 168, referred to in *United States* v. *Southeastern Underwriters Association*, *supra*, has not only been consistently, but universally, followed in order to uphold the broad structure of state regulation in its entirety, and unless this old case is to remain the law of the land to its fullest import, then state regulation must now be re-examined. Since that which is being regulated is now interstate commerce, it is limited by the provisions of the United States Constitution, the Commerce Clause, the Equality clause and the Fourteenth Amendment thereto. The law of the State of California has prohibited Appellant from assisting in a transaction constituting interstate commerce between a company, of which he was a member, and a resident of California seeking insurance outside of the State, having failed to obtain it therein. The conditions under which Appellant could complete an interstate transaction for the company he represented are that it conform its corporate structure in the state of its existence, and its entire method of doing business in every state in which it transacts business to the regulatory provisions of the State of California. Such requirement is in conflict with the above provisions of the United States Constitution and within the jurisdiction of this Court.

Western Union Telegraph Co. v. *Kans.*, 216 U. S. 1 (27);
Fidelity & Deposit Co. of Maryland v. *Tafoya*, 270 U. S. 246;
Hegman v. *Southern Railroad*, 203 U. S. 271, 51 L. Ed. 178, 27 S. Ct. 104;

Detweiler et al. v. *Welch, Commissioner of Agriculture, State of Idaho*, 46 Fed. (2d) 75, 73 A. L. R. 1440;
Sonneborn Bros. v. *Cureton*, Tex. 43 S. Ct. 643, 262 U. S. 506, 67 L. Ed. 1095;
Crenshaw v. *Arkansas*, 227 U. S. 389;
Alpha Portland Cement Co. v. *Commonwealth of Mass.*, 268 U. S. 203;
Hall v. *Geiger Jones Company*, 242 U. S. 539;
Hatch v. *Reardon*, 204 U. S. 152;
Angle v. *O'Mally*, 219 U. S. 128;
Buck v. *Kuykendall, Director of Public Works of the State of Washington*, 267 U. S. 307, 45 S. Ct. 324, 69 L. Ed. 623, 38 A. L. R. 286.

We believe it is unnecessary to further cite the multitude of cases decided by the Supreme Court of the United States which hold unconstitutional state statutes requiring that a license must be obtained for the purpose of engaging in interstate commerce with citizens of the regulating state or where the regulating statute is extraterritorial in its effect.

It is therefore respectfully submitted that the Supreme Court of the United States has jurisdiction of this appeal and that the same should be reviewed by the said Court and decision rendered therein.

Dated this 23rd day of May, 1945.

ALLEN K. PERRY,
ROBERT R. WEAVER,
Attorneys for Appellant.

SUPPLEMENT A

Robert R. Weaver, 448 South Hill Street, Los Angeles (13), California, Attorney for Defendant.

IN THE JUSTICE'S COURT OF VENTURA TOWNSHIP, COUNTY OF VENTURA, STATE OF CALIFORNIA.

No. 8133

THE PEOPLE OF THE STATE OF CALIFORNIA, *Plaintiff*,

vs.

F. O. ROBERTSON, *Defendant*

Statement on Appeal

To the Honorable Glen D. Corey, Justice of the above entitled Court and to Arthur M. Waite, Esq., District Attorney of Ventura County, State of California:

Whereas, the defendant, F. O. Robertson, having on the 29th day of September, 1944, duly taken an appeal from the judgment therein entered in the said above named Justice's Court of Ventura Township for the County of Ventura, State of California on the said 29th day of September, 1944,

You and each of you are hereby notified that said defendant, F. O. Robertson, in the above entitled cause now presents this, his statement of grounds of appeal and points upon which he relies upon appeal from the above entitled court to the Superior Court of the State of California in and for the County of Ventura, as follows:

I

That the evidence taken and heard by the court in said cause is insufficient to justify the judgment in that it discloses that all of the actions of the defendant consisted of a series of events constituting transactions in interstate commerce and, therefore, were not subject to prosecution under the laws of the State of California.

II.

That the judgment is contrary to law.

III

That the judgment is contrary to evidence.

IV

That the judgment is contrary to the law and the evidence.

V

That the court erred in its decisions of matters of questions of law arising during the course of the trial.

VI

That the complaint on which this action is predicated fails to state a public offense in that it appears on the face thereof that the acts of the defendant complained of were, if true, done by him in accordance with the provisions of the Fourteenth Amendment to the Constitution of the United States and the laws of the United States pertaining to the transactions of interstate commerce.

VII

That the court was without jurisdiction to entertain this proceeding for the reason that it appears on the face of the complaint that the acts of the defendant complained of were those pertaining to transactions in interstate commerce.

VIII

That Sections 703(a) and 1642 of the Insurance Code of the State of California are unconstitutional and in violation of and contrary to the commerce clause of the constitution of the United States and the Fourteenth Amendment thereof.

WHEREFORE, ~~Defendant prays~~ that the court allow and settle the above as and for his statement on appeal.

ROBERT R. WEAVER,
Attorney for Defendant.

SUPPLEMENT B

Endorsed: Filed April 21, 1945. L. E. Hollowell, Clerk, by R. O. Weigle, Deputy Clerk.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF VENTURA

No. 27739

THE PEOPLE OF THE STATE OF CALIFORNIA, *Plaintiff and Respondent,*

vs.

F. O. ROBERTSON, *Defendant and Appellant*

Memorandum of Opinion

In the Justice's Court of Ventura Township the defendant was found guilty of two counts of violation of the Insurance Code of California: (1) Violation of Section 703 (a) of the Insurance Code, and (2) violation of Section 1642 of the same Code. The case comes to the Superior Court on appeal from the judgment rendered pursuant to such conviction.

There is no dispute as to the facts involved, which may be stated from appellant's brief as follows:

> "In the case at Bar the record shows: *One*, that the First National Benefit Society had sent through the United States mails certain advertising material containing inquire cards, to prospective purchasers. *Two*, that one A. J. O'Lein forwarded to the Society at Phoenix, through the same mail the inquiry card in evidence. *Three*, that the Society forwarded the same inquiry card to F. O. Robertson through the mail. *Four*, that an application was sigued by the said O'Lein and his wife and forwarded direct to the Society through the mail. *Five*, that the application was accepted at Phoenix, Arizona, and policy mailed direct to the said O'Lein at Ventura, California, with instructions to make all payments direct to the home office at Phoenix. (Rep. Tr. Page 6-15.)"

Thus the defendant, in California acted as agent for a non-admitted insurer, without a license, and is clearly guilty of the crimes charged.

The whole ground of appeal is that the decision by the United States Supreme Court in the recent case of *United States* v. *South-Eastern Underwriters Asso.*, 64 S. Ct. 1162, compels a reversal of the judgment for the reason that the State of California has no power to regulate any phase of the insurance business, if that business be interstate.

I have very carefully read the decision in question. It holds that the business of insurance is commerce, and that a Federal indictment for conspiracy to violate the Sherman Anti-Trust Act is good against demurrer. There is nothing in the case which overrules prior decisions of the Supreme Court, holding state regulation of insurance to be valid.

As Mr. Justice Black points out: "Insurance touches the home, the family, and the occupation or business of almost every person in the United States"; and on page 1089 of the reported decision it is stated:

> "In all cases in which the Court has relied upon the proposition that 'the business of insurance is not commerce,' its attention was focused on the validity of state statutes—the extent to which the Commerce Clause automatically deprived states of the power to regulate the insurance business. Since Congress had at no time attempted to control the insurance business, invalidation of the state statutes would practically have been equivalent to granting insurance companies engaged in interstate activities a blanket license to operate without legal restraint. As early as 1866 the insurance trade, though still in its infancy, was subject to widespread abuses. To meet the imperative need for correction of these abuses the various state legislatures, including that of Virginia, passed regulatory legislation. Paul v. Virginia upheld one of Virginia's statutes. To uphold insurance laws of other states, including tax laws, Paul v. Virginia's generalization and reasoning have been consistently adhered to."

And on page 1091 the following language conclusively demonstrates that it was not the intention of the Supreme Court to deny to the several states the right to regulate insurance:

> "It is settled that, for Constitutional purposes, certain activities of a business may be intrastate and therefore subject to state control, while other activities of the same business may be interstate and therefore subject to federal regulation. And there is a wide range of business and other activities which, though subject to federal regulation, are so intimately related to local welfare that, in the absence of Congressional action, they may be regulated or taxed by the states. In marking out these activities the primary test applied by the Court is not the mechanical one of whether the particular activity affected by the state regulation is part of interstate commerce, but rather whether, in each case, the competing demands of the state and national interests involved can be accommodated. And the fact that particular phases of an interstate business or activity have long been regulated or taxed by states has been recognized as a strong reason why, in the continued absence of conflicting Congressional action, the state regulatory and tax laws should be declared valid."

Therefore all that this important leading case holds is that the Federal law applies to interstate insurance, and that state law likewise applies to interstate insurance until the Federal government may exercise its power to legislate in that particular field.

The judgment is affirmed.

Dated this 20th day of April, 1945.

LOUIS C. DRAPEAU,
Judge of the Superior Court.

Service of the foregoing Jurisdictional Statement and the receipt of a copy thereof are hereby acknowledged this 29th day of May, 1945.

(Signed) M. ARTHUR WAITE,
By DONALD D. ROFF,
Attorneys for Plaintiff and Respondent.